tor may come within the meaning of "other reasonable cause". (*Gatti* v. *Shoosmith*,[1]).

In this case the commissioner took the erroneous view that he had no discretion as section 23(3) did not apply to any case where the delay was due to the negligence of the solicitor of the intended appellant. In my view the commissioner had a discretion and he had not exercised it.

As I have said, in his "grounds of judgment" the commissioner also pronounced another ground for dismissing the application namely that the required deposit was made out of time. This matter was not raised nor argued before the commissioner and it was not the cause of the commissioner's decision at the hearing to dismiss the application. I should not, therefore, consider this matter as it is totally irrelevant as far as the application before this court is concerned. Counsel for the applicants, however, submitted that the applicants are entitled to ask for a declaration by this court that the finding of the commissioner as regards the deposit, whether it be correct or not, is wholly irrelevant to the whole question under section 23(3), but I do not think the applicants are entitled to such a declaration.

Counsel for the applicants submitted that, as it was not in dispute between the parties at the hearing before the commissioner that the delay in filing the notice of appeal was due to the mistake of the solicitor's clerk, and as the delay was only three days for which the applicants were in no way to blame, no reasonable tribunal, correctly directed as to its powers, could fairly and properly make an order refusing permission to proceed and that the appropriate order for this court to make is to direct the commissioner to make an order allowing the applicants to proceed with the appeal and to direct the commissioner thereafter to hear the appeal under the Act. In my view that is not the proper order to make in this case.

Lord Alverstone in *Rex* v. *Justices of Kingston*[2] said:

"I think it is quite unusual to direct a judicial tribunal to act in a particular way unless it is quite plain that what they have to do is purely ministerial and is not judicial."

Channel J. in the same case said (at p. 591):

"I think it is an important matter which should be thoroughly understood, that this court does not by *mandamus* direct justices or any public body or anybody else upon whom a duty is cast, how and in what manner they are to perform their duty. They simply direct them by *mandamus* to perform their duty. I think also that even where the facts are all admitted, so that in the particular circumstances of a particular case — as my brother has pointed out in this case — there happens to be but one way of performing that duty, still the *mandamus* goes to perform the duty, and not to perform it in a particular way."

The commissioner in this case had not exercised his discretion. He should consider all the aspects of the matter and then decide whether or not permission to proceed with the appeal should be granted.

For these reasons there will therefore be an order that the order of 21st September, 1970, of the commissioner be removed into this court and quashed and there will also be an order that a *mandamus* do go to the commissioner directing him to consider and determine the application of the applicants according to law.

Order accordingly.

Solicitors: *Braddell Bros.; Rodyk & Davidson.*

NG KAY THIAM & ANOR. v. REDHILL PAPER CONVERTERS LTD.

[C.A. (Tan Ah Tah, Winslow & Choor Singh JJ.) September 25, 1971]

[Singapore — Civil Appeal No. 26 of 1970]

Factories — Machine operation — Breach of statutory duty — Contributory negligence — Factories Ordinance, 1958, ss. 21, 22, 28 & 31.

Negligence — Factories — Breach of statutory duty.

Damages — Hand — Amputation of right forearm.

This was an appeal against the decision of the learned Chief Justice, dismissing the plaintiffs' claim in respect of injuries sustained by the first plaintiff then aged 17½. The appellant/first plaintiff was employed by the respondents as a sweeper in their factory. He also assisted in the operation of a machine which compressed shredded paper or paper sweepings into bales of paper. The machine consists of three sections, the prime mover, the transmission machinery with its control, and the end device or appliance. On one occasion the appellant/first plaintiff's right hand was caught in the well of the machine, resulting in the amputation of part of his right forearm. Expert evidence revealed that the part of the machinery involved in this accident was the end device. He brought an action against the respondents claiming: (1) negligence at common law; (2) breach of statutory duty under section 28 of the Factories Ordinance, 1958; (3) breach of section 21 of the same Ordinance which required every part of the transmission machinery to be securely fenced. In the closing stages of the trial, an attempt was made to amend the plaintiffs' pleadings to incorporate a claim under section 22 of the Factories Ordinance, 1958, as an alternative. This section deals with dangerous parts of any machinery other than prime movers and transmission machinery. This amendment was refused in the court below but allowed by the Court of Appeal.

Held, allowing the appeal: (1) the claim based on negligence at common law failed because: (a) the only possible danger was that if anyone operating the machine placed his hands in the well of the machine whilst it was in operation; and (b) the appellant/first plaintiff had been instructed by the foreman, first by demonstration and then by supervision, as to how to operate the machine and of the possible danger of using the hand instead of a metal rod which was provided for pressing down the rising paper into the well;

(2) the claim for breach of statutory duty under section 28 of the Factories Ordinance failed for the same reason;

(3) the claim under section 31 also failed because the section related to transmission machinery and not to the end device or to dangerous parts of any machinery other than prime movers and transmission machinery;

(4) the end device was dangerous without secure fencing and therefore the defendants/respondents were liable under section 22 of the Factories Ordinance. The appellant/first plaintiff was not wilful or deliberately foolhardy in the face of the situation in which he found himself. He acted very much in the manner a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur. One has to consider not only a prudent alert and skilled operator intent upon his task, but also the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part;

(5) however, in the circumstances of this case, the appellant/first plaintiff's responsibility for the accident was assessed at one third the total responsibility, taking into account the latitude ordinarily accorded to workmen in a factory or mine as opposed to an ordinary man not exposed to the noise, strain, and manifold risks of factory or mine;

(6) the general damages in respect of pain suffering, loss of amenities and enjoyment of life, embarrassment, etc. assessed at $20,000, and damages for loss of future earnings assessed at $10,000, were reduced by 1/3 to $20,000.

Cases referred to:-

(1) *Midland and Low Moor Iron and Steel Co. Ltd.* v. *Cross* [1964] 3 All E.R. 752, 756.

(2) *Mitchell* v. *North British Rubber Co. Ltd.* 1945 S.C. (J) 69 at p. 73.

(3) *John Summers & Sons Ltd.* v. *Frost* [1955] 1 All E.R. 870.

(4) *Walker* v. *Bletchley Flettons Ltd.* [1937] 1 All E.R. 175.

(5) *Caswell* v. *Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 146-166.

(6) *Ng Kay Thong* v. *Chee Shan Shong* [1966] 1 M.L.J. 235.

(7) *Lew Fa* v. *Seng Chong Metal Works Ltd.* [1966] 1 M.L.J. 231.

(8) *Saw Tong Seng* v. *Ong Kim Hoon* [1968] 1 M.L.J. 203.

COURT OF APPEAL.

K. E. Hilborne for the appellant.

S. Saurajen for the respondents.

Cur. Adv. Vult.

Winslow J.: (delivering judgment of the court): This is an appeal against the decision of the learned Chief Justice dismissing a claim brought by the plaintiffs against the defendants in respect of injuries sustained on 17th October 1967 by the first plaintiff who was then a sweeper aged 17½ employed by the defendants at the rate of $2 per day. In addition to his duties as sweeper he also assisted in the operation of a machine in the factory of the defendants which caused him the injuries to his right hand resulting in the amputation of part of his right forearm which is the subject matter of his claim.

The first plaintiff based his claim in the first instance on negligence at common law. Secondly, he based his claim on breach of statutory duty under section 28 of the Factories Ordinance, 1958. Thirdly, he claimed that the defendants were in breach of section 21 of the same Ordinance which requires every part of the transmission machinery to be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced. Finally, an attempt was made, in the closing stages of the trial, by counsel for the first plaintiff to amend the plaintiffs' pleadings to bring in a claim under section 22 of the Factories Ordinance, 1958. This provision is in substantially similar terms to section 21 of the Ordinance except that it deals with dangerous parts of any machinery other than prime movers and transmission machinery.

It may be convenient at this stage to describe the machine and how it operates. We cannot do better than to quote the description of the machine and its operation as contained in the judgment of the learned Chief Justice as follows: —

"The machine is shown in the photographs which also show the 'wood pulp' which is in fact shredded paper or paper sweepings which is fed into the machine to be compressed into a bale of compressed paper. An expert, Mr. Loo Ming, who holds the degree of Master of Science in mechanical engineering, a member of the Institute of Engineers, Singapore and an associate member of the American Society of Mechanical Engineers and is presently a lecturer in the engineering faculty, University of Singapore, prepared a schematic or a diagrammatic representation of the working of this machine. He also gave evidence that essentially the machine consists of three sections, the prime mover, the transmission machinery with its control, and the end device or appliance. The prime mover is the electric motor that supplies the energy. The transmission machinery is the portion that is interphased between the prime mover and the end device and its purpose is to convert energy from one form to a form that is suitable for use at the end device. The end device in the case of this machine is the ram that bales the shredded or loose paper. Pressure is supplied by an electric motor to the hydraulic cylinder which moves the ram backwards or forwards. The hydraulic cylinder is controlled by the direction control valve which controls it forward, backward or stops it. The direction control valve is in turn controlled by a lever. A wall mainline switch controls the electric power to the whole unit and there is a push button switch in the machine which also controls the electric power to the electric motor.

The loose paper is fed into an opening or well in the machine, which opening or well is, according to the expert, part of the end device of this machine. Then the main switch and the motor switch are switched on. The lever which controls the direction control valve is then pulled down and this moves the ram into the well of the machine thereby compressing the loose paper in the well. As a result bits of the loose paper rises and a metal rod is used to press this rising paper down into the well. When the ram has passed a certain part of the whole machine the lever is used to bring the ram backwards to its original position and the whole process, including filling the well with paper, is repeated six or seven times before a bale of compressed paper is produced. The movement of this ram backwards or forwards is comparatively very slow. The evidence is that when there is paper in the well of the machine it moves forward about 1¼ inch per second, taking 15 seconds for it to move across the opening of the well and 13 seconds to come back to its original position."

We agree that the claim based on negligence at common law must fail for the reasons stated by the learned Chief Justice as follows: —

"The only possible danger to anyone operating it would be if he places his hand in the well of the machine while the ram is moving forward and leaves the hand in the well when the ram has travelled across the whole length of the well in which event the hand would be jammed between the ram and far wall of the well. This was what happened to the first plaintiff and accepting as I do the foreman's evidence that he instructed the first plaintiff, first by demonstration and then by supervision, as to how to operate the machine and of the possible danger of using the hand, instead of the metal rod which was provided and used by him during the demonstration, to press down the rising paper into the well when the ram was moving forwards, I find the first plaintiff's claim at common law must fail."

We also agree that the claim for breach of statutory duty under section 28 must fail for similar reasons as already indicated in the portion cited

With regard to the claim that the defendants were in breach of section 21 of the Factories Ordinance relating to the safety of transmission machinery, the only acceptable evidence in the whole case was that of one Mr. Loo Ming, the expert called by the defen-

dants, who made it quite clear that, essentially, the machine consists of three sections, the prime mover, the transmission machinery with its control and the end device or appliance. In view of his evidence that the part of the machinery involved in this accident was the end device, namely, the ram that bales the shredded or loose paper, it is quite clear that the claim under this head must fail for the simple reason that section 21 relates to transmission machinery and not to the end device or to dangerous parts of any machinery other than prime movers and transmission machinery.

This brings us accordingly to the crucial part of this case. It is true that there was a last minute attempt to amend the plaintiffs' pleadings so as to bring in a claim under section 22. It was after the evidence of Mr. Loo Ming, the expert called by the defence, that counsel for the plaintiffs realised, for the first time, that the ram was part of the end device and that it was a part of the machinery in question which was neither a prime mover nor part of the transmission machinery and that section 21 had no application. He accordingly applied to amend the pleadings at that late stage by adding the words "or alternatively of section 22(1)" at the end of paragraph (d) of the particulars. The plaintiffs did not seek to rely on any further evidence and closed their case on the evidence already before the court. The application to amend the statement of claim by adding the reference to section 22 of the Factories Ordinance was resisted by the defendants and the learned Chief Justice was not inclined to accede to it: —

"first, because it was made at a very late stage of the proceedings and secondly and more importantly because it would deprive the defendants of the opportunity of calling evidence to meet this particular allegation."

However, his Lordship proceeded to state his views on the merits thereof as follows: —

"In any event as the plaintiffs are relying on the evidence before the court and are not calling further evidence in support of this allegation I would hold that they cannot succeed under section 22(1) on the evidence before me. The submission put forward on behalf of the plaintiffs is, as I understand, that the mouth of the well should have been fitted with a device or guard, namely, a removable lid so that when the ram is in motion, the lid would automatically prevent the operator of the machine from coming into contact with the ram. In my opinion this submission can only succeed if the ram is a dangerous part of the machine within the meaning of section 22(1). It seems to me obvious that the actual well or opening into which the loose paper is fed could in no circumstances be said to be a dangerous part of the machine. It also seems to me obvious that the ram by itself is not a dangerous part of the machine. The question is whether or not the ram becomes a dangerous part of the machine when the machine is in normal operation. I think not because in my opinion the ram does not undoubtedly become dangerous when the machine is in normal operation performing the mechanical work which the machine is specifically designed to achieve. I come to this conclusion adopting the words of Lord Evershed (dealing with a different problem from the present case) in *Midland and Low Moor Iron and Steel Co., Ltd.* v. *Cross* where he said: 'As it seems to me, the question whether it can properly be said that some part of a piece of machinery is dangerous must depend on a consideration whether such danger exists and arises from the normal operation of the machine, that is, from the purposes of the mechanical work which the machine is specifically designed to achieve; and if such a part becomes undoubtedly dangerous from such normal and projected operation, then it follows that such part of the machine is a dangerous part within the meaning of section 14(1).' "

At the hearing of the appeal, we decided, after hearing both counsel, to allow the amendment by adding, as an alternative, the reference to section 22(1) to the particulars at the end of paragraph (d) thereof.

It will be seen that the learned Chief Justice found in any event, that the first plaintiff could establish no breach of section 22.

Having considered the authorities, we have reached a different conclusion from that of the learned Chief Justice in this respect and we would now set out our reasons for differing from him.

His Lordship decided that the ram does not undoubtedly become dangerous when the machine is in normal operation performing the mechanical work which this machine is specifically designed to achieve. He then went on to adopt the portion of Lord Evershed's judgment in *Midland and Low Moor Iron and Steel Co., Ltd.* v. *Cross*[1] which we have already quoted.

It seems quite clear to us that the nigger in the woodpile is the word "undoubtedly" in juxtaposition to the word "dangerous" used by Lord Evershed in that part of his judgment cited and, in our opinion, the learned Chief Justice appears to have been misled into considering that part of a piece of machinery must be said to be undoubtedly dangerous before there can be a breach of the statutory duty imposed by section 22(1).

It should be noted that Lord Evershed in the later stages of the same judgment, after stating when machinery can be said to become "undoubtedly dangerous" concludes as follows: —

"I conclude my judgment by respectfully reciting and adopting the passage from the judgment of the Lord Justice-Clerk (Lord Cooper) in the Scottish case of *Mitchell* v. *North British Rubber Co., Ltd.*, which my noble and learned friend, Lord Reid, cited in his speech in *John Summers & Sons Ltd.* v. *Frost* where your lordships found that there was a duty to fence a grinding wheel in the machine there under consideration. The language of Lord Cooper was as follows: 'The test is objective and impersonal. Is the part such in its character, and so circumstanced in its position, exposure, method of operation and the like, that in the ordinary course of human affairs danger may reasonably be anticipated from its use unfenced, not only to the prudent, alert and skilled operative intent upon his task, but also to the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part?' "

The test laid down by Lord Cooper in terms of the language used by him in *Mitchell* v. *North British Rubber Co. Ltd.*[2] is a far cry from the test propounded by Lord Evershed earlier in which he appears to suggest that part of a machine must be said to be undoubtedly dangerous before there can be a breach of section 22(1). The emphasis in *Mitchell's* case is on the words

"is the part such in its character, and so circumstanced in its position, exposure, method of operation and the like, that in the ordinary course of human affairs danger may reasonably be anticipated from its use unfenced".

We would emphasize the expression "may reasonably be anticipated from its use unfenced". Lord Cooper said nothing about the parts having to be undoubtedly dangerous.

In *John Summers & Sons Ltd.* v. *Frost*,[3] Viscount Simonds, in the House of Lords, said the following in relation to secure fencing: —

"The next question is what is the test or standard of secure fencing. I agree with my learned and noble friend, Lord Reid, that, since the danger to be guarded against is contact with the exposed part of the grindstone while it is in motion, fencing is secure which effectively protects the workman from that danger. By workman in this context I mean not only the actual operator but also any other person employed on the premises. Your Lordships have been referred to a number of formulae and I do not wish to add to their number. It is elementary that it is necessary to consider not only the risk run by a skilled and careful man who never relaxes his vigilance. An observation of Du Parcq J., in *Walker* v. *Bletchley Flettons, Ltd.* to the effect that a machine is dangerous

> 'if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur'

has been sometimes mentioned with approval, and I think that it gives as precise a direction as can be hoped for if it is read in conjunction with what the Lord Justice-Clerk (Lord Cooper) said in *Mitchell* v. *North British Rubber Co. Ltd. viz.*, that a machine is dangerous if..."

(The portion quoted by Lord Evershed then follows.)

In the same case, *i.e.*, *John Summers and Sons Ltd.* v. *Frost*, Lord Reid had the following observations to make in relation to the same question as to when machinery or parts of machinery can be said to be dangerous. With regard to Du Parcq J.'s test he considered that it might be better to say "a reasonably foreseeable cause of injury" in substitution for the expression "a possible cause of injury". Otherwise his Lordship also approved of the direction given by Du Parcq J. as Viscount Simonds himself did.

Lord Reid also cited Lord Cooper's test with approval.

Whether one adopts the test laid down by Du Parcq J. in *Walker* v. *Bletchley Flettons, Ltd.*[4] with the suggested alteration indicated by Lord Reid in the House of Lords or the test laid down by the Lord Justice-Clerk (Lord Cooper) in *Mitchell* v. *North British Rubber Co., Ltd.* cited in the same case which was before the House of Lords, it seems to us that there can be little doubt that the part of the machinery in which the first plaintiff's hand was crushed by the ram in the end device thereof was dangerous without secure fencing. The first plaintiff was not, in our opinion, wilful or deliberately foolhardy in the face of the situation in which he found himself. He acted very much in the manner in which Du Parcq J. said: —

" a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur".

One has to consider not only a prudent, alert and skilled operator intent upon his task, but also the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part. Finally, in relation to this particular aspect of the matter, we would say that all that Lord Evershed really meant by the use of the word "undoubtedly" immediately preceding the word "dangerous" was to emphasize that the part of the machinery in question should be dangerous within the test which he approved and adopted from Lord Cooper in the case cited.

We now turn to the question of contributory negligence on the part of the first plaintiff. His counsel conceded that he could not deny contributory negligence on his part and that he was undoubtedly stupid. Mr. Saurajen sought to make him the sole and only operative cause of his own misfortune.

It is clear on the authority of *Caswell* v. *Powell Duffryn Associated Collieries Ltd.*[5] that it is open to the court to find an element of contributory negligence in the conduct of the plaintiff in an action based upon a breach of statutory duty as in an action based on negligence.

Mr. Hilborne submitted that the first plaintiff was about 25 to 33⅓% to blame himself for not taking sufficient care for his own safety. We do not agree with Mr. Saurajen that he was solely responsible for the accident which occurred. In our opinion his share of the blame in all the circumstances of this case, taking into account the latitude ordinarily accorded to workmen in a factory or mine as opposed to an ordinary man not exposed to the noise, strain, and manifold risks of factory or mine (see Lord Atkin at page 166 of the *Caswell's* case) may fairly be assessed at one-third of the total responsibility for the accident.

It now remains for us to assess the quantum of damages. The claims under the various heads brought by the first plaintiff having been dismissed, we do not have the benefit of any assessment of the damages which would have been awarded had the decision been in favour of the first plaintiff.

As we have said earlier the first plaintiff was a young lad of about 17½ years of age at the time of the accident. He sustained injuries as follows: —

Trans-scaphoid perilunar dislocation of right wrist joint;

5" transverse deep laceration on the ventral surface of the right wrist running from the lateral to medial side;

Both radial and ulnar arteries were crushed at the site of the laceration;

A forearm amputation at the level of the lower third of the shafts of right radius and ulna.

He was hospitalised and subsequently an operation was performed on him as a result of which his right forearm was amputated at the level of the lower third of the shafts of right radius and ulna. Dr. William Fung gave evidence to the effect that with the aid of an artificial arm an intelligent person with drive can do almost anything and can minimise functional loss at the age of the first plaintiff.

All things considered, we are of the opinion that to a certain extent, the first plaintiff has not done all that he could have done towards mitigation of damages in the sense that he has refused employment which was kindly offered to him by his employers at the same rate of pay. He said that this was because of his embarrassment and fear of being teased. Moreover, he has not made any effort in the direction of getting an artificial arm for that portion of the right forearm which he lost. However, the facts remain that he must have undergone considerable pain and suffering and that he will continue to suffer some disablement in the matter of the performance of his normal duties, his general enjoyment of life and the loss of amenities

to which he was accustomed and suffer consequential embarrassments and drawbacks to which a person of his age will undoubtedly be exposed.

We have considered the awards in cases like *Ng Kay Thong* v. *Chee Shan Shong*,[6] *Lew Fa* v. *Seng Chong Metal Works Ltd.*[7] and *Saw Tong Seng* v. *Ong Kim Hoon*.[8] Those were also cases of amputation of the right arm in one case and the left arm in the other two. In particular, in the case of *Saw Tong Seng* v. *Ong Kim Hoon*, the injuries were much more serious in that the whole of the right arm had been amputated and the plaintiff therein lost the use of the right arm completely as it had been disarticulated from the shoulder joint. We assess general damages in respect of pain and suffering, loss of amenities and enjoyment of life, embarrassments, etc. at $20,000. As for loss of future earnings we assess damages at $10,000, making a grand total in respect of general damages of $30,000. Special damages have been agreed in the sum of $750 for the first plaintiff and $56 for the second plaintiff, his mother, in respect of transport expenses.

There will be judgment for the first plaintiff for the sum of $20,000 as general damages and $500 as special damages. There will be judgment for $37 for the second plaintiff.

The defendants will pay half the costs in the court below and the entire costs of appeal to the plaintiffs.

Appeal allowed.

Solicitors: *Hilborne & Co.; Drew & Napier.*

MALAYSIAN REPORTS

WONG CHOO YONG v. SAFETY INSURANCE CO. LTD.

[O.C.J. (Ibrahim J.) May 24, 1970]

[Kuala Trengganu — Civil Action No. 96 of 1966]

Road Traffic — Accident — Personal injuries — Claim to enforce judgment against insurers — Requisite notice to be given — Sufficency of — Road Traffic Ordinance, 1958, s. 80(2)(a).

Insurance — Motor lorry — Accident — Whether policy covered learner driver — Road Traffic Ordinance, 1958, s. 80(1).

The plaintiff's claim was made against the defendants/insurers under section 80(1) of the Road Traffic Ordinance, to enforce the judgment he had obtained against one Chin Yoon Sin (Civil Suit No. 20 of 1965) on a claim for damages in respect of personal injuries sustained by him in a traffic accident involving a motor lorry, which at the material time was driven by the said Chin Yoon Sin with the permission and under the tuition of its owner, Lai Mee Nam.

The defendant admitted all the plaintiff's allegations of fact except the following: (1) whether Chin Yoon Sin was driving the said motor lorry as a learner driver with the permission and under tuition of the said Lai Mee Nam; (2) whether the defendants had notice within the meaning of section 80(2)(a) of the Road Traffic Ordinance, 1958. These constituted the issues before the court.

Regarding the second issue, the plaintiff's solicitors sent a letter dated February 14, 1965, to the said Chin Yoon Sin with carbon copies extended to the said Lai Mee Nam and the present defendants. The decision of this issue depended on whether in the circumstances of this case, the said letter and the extension of its carbon copies to the defendants constituted sufficient and good notice for the purpose of section 80(2)(a). The said letter also contained the additional information that legal proceedings would be taken in the High Court at Kuala Trengganu. The last paragraph of the said letter read as follows: "We have accordingly been instructed to demand the payment to our client of the sum of $30,939.00 in full settlement of his claims and to file legal proceedings against you in the High Court at Kuala Trengganu unless within 10 days from receipt of this letter we receive a written admission of your liability for these claims." The main submission of the defendants was that these words did not constitute sufficient notice of proceedings as they amounted to no more than a conditional or a contingent threat that proceedings would proceed only if the addressee did not admit liability or if he admitted liability, he did not or made no arrangements to pay.

Held: (1) the said Chin Yoon Sin was driving the said motor lorry in the capacity of a learner driver and under the tuition of the owner, Lai Mee Nam, with his permission, and he was therefore an "insured person" within the meaning of section 80(1) of the said Ordinance;

(2) sufficient particulars had been given in the said letter to constitute it a sufficient notice to the defendants that proceedings were intended to be taken against the insured person. It was not an ideal notice but it nevertheless was of sufficient formality to be understood by a reasonable man as an intimation that legal proceedings were to be taken against the insured person.

Per Ibrahim J.: "The said section 80(2)(a) is identical with section 10(2)(a) of the English Road Traffic Act of 1934, except that in the English Act, the notice to be given to the insurer is notice of *the bringing of* the proceedings. As in this action the purported notice was given before the commencement of the proceedings, the difference in the two statutes is in my view immaterial when considering English authorities on this issue."

[Editorial Note: See *Safety Insurance Co. Ltd.* v. *Wong Choo Yong*, [1971] 1 M.L.J. 167 where the defendants' application for extension of time to file the record of appeal